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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,868	12/11/2003	Randy Westlund	GUID.076PA (02-046)	8097

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EXAMINER

JASTRZAB, JEFFREY R

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/733,868	Applicant(s) WESTLUND, RANDY	
	Examiner Jeffrey R. Jastrzab	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/18/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the the fluoropolymer coating overpolymeric coating as in Claim 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

Claims 1, 3, 6, 8, 12, 14, 16, 19, 21, 30, 31 and 33 stand and Claim 11 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Helland et al 5545201.

Applicant adds the limitation that the coating is sufficient to inhibit exit block development and argues that Helland fails to teach the "identical invention contemplated" by Applicant. This argument is not found to be persuasive. Insulation, by its very nature, inhibits exit block development, i.e. the formation of fibrotic tissue around an electrode, regardless of the amount of actual amount used. Even if only a small portion is used as in Helland et al., which does not cover the whole distal helical electrode (46), there is inherently *a degree* of exit block development inhibition, which is all that the claim breadth requires. As such, Helland et al. continues to read on the claims as amended. While it is noted that the Helland et al. insulation serves a different purpose, it nonetheless constitutes the same structure as claimed. This rejection is hereby made FINAL.

Claim Rejections - 35 USC § 103

Claims 2, 4, 7, 9, 15, 17, 20, 22, 32 and 34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Helland et al in view of Carson US 5931862 for the reasons of record.

Applicant argues that the porous covering is not on the pacing electrode in Carson and therefore cannot be combined with Helland. This is not persuasive.

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Applicant argues that the porous covering is not on the pacing electrode in Carson and therefore cannot be combined with Helland. This is not persuasive.

Carson clearly teaches coating electrodes with an ePTFE coating having a pore size to inhibit tissue growth and to allow electrical stimulation therethrough. The exchanging of one type of microporous coating for another would have been an obvious substitution of known functional equivalents, regardless of the actual type of electrode on which it is being used. Therefore this rejection is hereby made FINAL.

In response to applicant's argument that the Carson device does not confront the "same problems" and Applicant, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Claims 5, 10, 18, 23 and 35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Helland et al #5545201 in view of Stokes et al H356 as set forth in the previous office action absent any arguments to the contrary.

Claims 24, 25 and 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dutcher et al 4357946 in view of Helland et al #5545201 as set forth in the previous office action absent any arguments to the contrary.

Claims 26 and 28 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Dutcher et al 4357946 in view of Helland et al #5545201 as

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applies to claim 24 above in further view of Carson #5931862 as set forth in the previous office action absent any arguments to the contrary.

Claim 29 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Dutcher et al 4357946 in view of Helland et al #5545201 as applied to claim 24 above in further view of Stokes et al H356 as set forth in the previous office action absent any arguments to the contrary.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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(571) 272*4947. The examiner can normally be reached on Monday -
Wednesday 5:30a.m. to 4:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the
examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The
fax phone number for the organization where this application or proceeding is
assigned is 703-872-9306.

Information regarding the status of an application may be obtained from
the Patent Application Information Retrieval (PAIR) system. Status information
for published applications may be obtained from either Private PAIR or Public
PAIR. Status information for unpublished applications is available through
Private PAIR only. For more information about the PAIR system, see [http://pair-
direct.uspto.gov](http://pair-direct.uspto.gov). Should you have questions on access to the Private PAIR
system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-
free).


Jeffrey R. Jastrzab
Primary Examiner
Art Unit 3762
1/4/5